and not *in esse* at the time of the agreement. *Mitchell* v. *Winslow,* 2 Story 630, Fed. Cas. 9673; *Wright* v. *Bircher,* 72 Mo. 179, 37 Am. Rep. 43. Upon this point it differs from a legal lien in that it may attach without possession of the property charged being taken. *Holroyd* v. *Marshall,* 10 H. L. Cas. 191, JONES, CHATTEL MORTGAGES, § 170. Many local statutes, however, require possession to be taken to perfect an equitable lien and when so required the federal courts will recognize it. *Thompson* v. *Fairbanks,* 196 U. S. 516, 25 Sup. Ct. 306. This latter case is cited in the principal case as an authority that where possession is taken it may relate back to the time of the contract so as to preserve equities. Other cases to the same effect are: *Humphrey* v. *Tatman,* 198 U. S. 91, 25 Sup. Ct. 567; *Sexton* v. *Kessler & Co.,* 172 Fed. 535, 40 L. R. A. 639. The cases recognize, when equity demands, the distinction between the creation of an equitable charge on property and the consummation of one that has been previously created.

BANKRUPTCY—WHEN TRUSTEE'S LIEN ATTACHES.—Possession of a chattel was transferred on a conditional sale contract. Five months later the conditional vendee filed a voluntary petition in bankruptcy, and upon adjudication the chattel passed to his trustee in bankruptcy. Shortly thereafter, the balance of the purchase price being due and unpaid, the conditional vendor applied to the court for the possession of the chattel. The contract had not been recorded until about two months before the petition in bankruptcy was filed. In the state the general rule prevailed that an unrecorded conditional sale contract is void as against a vendee's creditor who has fastened a lien upon the property by legal process. The trustee claimed that the filing within four months operated as a preferential transfer under § 60b; and also claimed a prior lien by virtue of that portion of the 1910 amendment to § 47a (2) of the Bankruptcy Act, which provides that the trustee "as to all property in the custody or coming into the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings thereon." *Held,* that there was no preference because there was no transfer, and that the trustee's lien under § 47a (2) did not attach until the filing of the petition. *Bailey* v. *Baker Ice Machine Co.,* (1915), 36 Sup. Ct. 50.

In holding that the trustee's lien under § 47a (2) does not become effective before the petition in bankruptcy is filed, the decision is in accord with the following cases: *Keeble* v. *John Deere Plow Co.,* 190 Fed. 1019; *In re Jacobson & Perril,* 200 Fed. 812; *Hart* v. *Emmerson-Brantingham Co.,* 203 Fed. 60; *In re Superior Drop Forge & Mfg. Co.,* 208 Fed. 813, 819; *Big Four Implement Co. et al.* v. *Wright,* 207 Fed. 535. These cases do not undertake, and for the most past expressly refuse, to state an opinion as to when the lien actually becomes effective. The Supreme Court, however, deliberately states that the lien becomes effective when the petition is filed. This is in accord with *Massachusetts Bonding Co.* v. *Kemper,* 220 Fed. 847, and with a dictum in *In re Farmers Co-operative Co.,* 202 Fed. 1005. In *In re East End Mantel & Tile Co.* 202 Fed. 275, is a dictum to the effect that the lien does not become effective until the trustee is appointed, and this view was taken in

In re Rose, 206 Fed. 991. The view taken by the Supreme Court in the principal case is consistent with its general policy in favoring the time at which the petition was filed as "the line of cleavage with reference to the condition of the bankrupt estate." *Everett* v. *Judson,* 228 U. S. 474; *Zavelo* v. *Reeves,* 227 U. S. 625; *Acme Harvester Co.* v. *Beekman Lumber Co.,* 222 U. S. 300. In determining that, because the property belonged to the vendor, the contract transferred nothing from the bankrupt and therefore resulted in no diminution of his estate, the court followed the rule of *New York Co. Bank* v. *Massey,* 192 U. S. 138, which held that the deposit of money by an insolvent debtor in a creditor bank within four months of the debtor's bankruptcy was not a preference because the deposit created a debt owing from the bank to the depositor, and therefore there was no diminution of the latter's estate. Theoretically the decisions, both in the *Massey* case and in the principal case, are sound; practically, however, the result in both cases is that after the transaction complained of (in the *Massey* case the deposit, in the principal case the recording of the conditional sale contract) creditors are in a worse position than they were before. The Bankruptcy Act aims to avoid all transactions, within four months before bankruptcy, which have this result; but in the large classes of transactions like the *Massey* case and the principal case it unfortunately fails in its object.

BILLS AND NOTES—ACCEPTANCE ON ANOTHER PAPER.—The plaintiff held a claim against X, who delivered to the plaintiff two checks drawn by X in favor of the plaintiff on the defendant bank, and intended as payment of the claim. Both checks were post-dated, and were received provisionally by the plaintiff on the understanding that an arrangement could be made with the bank to take care of the checks. The bank's president in consultation with the plaintiff and drawer, delivered to the plaintiff a writing by which the bank agreed to remit the sums on the dates when due. On the faith of this agreement the plaintiff received the checks in extinguishment of the claim, and turned them over to the bank's president, who kept them. The draft for the amount of one check was sent in due time, but the bank refused to remit for the amount of the other. The plaintiff recovered for this latter amount in the lower court, but upon appeal the judgment was reversed. *Swenson Bros. Co.* v. *Commercial State Bank of Coleridge,* (Neb. 1915), 154 N. W. 233.

By Rev. St. 1913 §5502: "A 'check' is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this chapter applicable to a bill of exchange payable on demand apply to a check," and by §5451: "Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value." In the instant case the last of these required elements is lacking. Though the plaintiff received the checks as payment of the claim, yet he parted with no property and gave no value, for them. * * * This much is decisive of the case, but there is dictum to the effect